

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3611 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No

No
No
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No

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4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?No

G S R T C

Versus

D S PARMAR

Appearance:

MR.MAJGAVKAR FOR MR SN SHELAT for Petitioner
MR.KOGJE FO MR SV RAJU for the Respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 12/04/96

ORAL JUDGEMENT

This Special Civil Application is directed against the Award dated 14.7.1993 passed by the Labour Court, Ahmedabad in Reference (LCA) No.368 of 1994 whereby the reference has been partly allowed and the corporation has been directed to reinstate the two respondents with continuity of service from 1.3.1983 and to pay all the backwages except that they shall not be entitled to three yearly increments with effect from 1.3.1993 and the intervening period shall be treated as leave of the kind due and if no leave is due the leave without pay.

Eleven employees of the corporation including the present two respondents who were found to be involved in the case of negligence in discharge of their duties as a result of which the conductor Mr.Babulal Makwana could misappropriate the amount of Rs.74,019/- were subjected to disciplinary action. The different orders were passed with regard to the different employees in the inquiry which was held against these employees. It is given out by the learned counsel that the conductor had been dismissed and these two respondents had also been dismissed, however the reference in question was not with regard to the conductor.

The Labour Court considered the material which was made available before it and came to the conclusion that so far as the present two respondents are concerned they were only found to be negligent in discharge of their duties as they ought to have verified the erasers and should have tried to find out the erased ticket blocks etc. The Labour Court has found that admittedly they themselves had not done the erasers in the ticket blocks. Two respondents were alleged of negligence in discharge of their duties whereby the conductor could commit offence of misappropriation to the tune of Rs.9500/- and it has also been held by the Labour Court that admittedly there was no charge of intentional omission in discharge of their duties and further that the misappropriation had been committed by conductor Babulal Makwana and not by the present respondents. What has been held against the present respondents is that they remained negligent in discharging their duties and thereby gave opportunity to the conductor Mr.Babulal Makwana to commit misappropriation. Out of the total amount of Rs. 74,019/- which was misappropriated by the conductor the negligence for facilitating the misappropriation by Mr.Makwana to the tune of Rs.9500/has

been held to be proved against the present respondents. The Labour Court, therefore, in exercise of its powers under section 11-A of the I.D.Act has set aside the order of dismissal holding that the punishment of dismissal was too harsh because the charge levelled against the respondents was of negligence only. On these premises the Labour Court has granted reliefs as aforesaid.

Mr.Majgavkar has assailed the award on the basis that it was a case in which serious allegation of misappropriation of heavy amount was there and therefore the Labour Court ought not to have interfered with the punishment of dismissal and in any case the full backwages should not have been granted because according to the Labour Court itself the respondents had not been exonerated and that punishment of denying only increment from 1.3.1983 was not adequate. On the other hand Mr.Kogje has argued that having found it to be a case of negligence only the Labour Court was justified in interfering with the punishment of dismissal and the order of all the backwages with the denial of three increments does not suffer from any infirmity and once the punishment of stopping of three increments has been imposed there is no question of denying the backwages. In support of his submission Mr.Kogje has relied upon 1983 (1) SLR [Rama Kant Misra Vs. The State of U.P. and others] and 1995(6) SCC Pg.237 [Palghat BPL & Pspthozhilaliunion Vs. BPL India Ltd and Others]

I have considered the submissions made on behalf of both the sides. The finding of the Labour Court is that the respondents had been negligent in discharging their duties and therefore the Labour Court has rightly held that the punishment of dismissal was too harsh in the instant case, more particularly, when the negligence of the respondents was proved in respect of the misappropriation of Rs.9500/- only. In the facts of this case, I do not think that the order of the Labour Court in reducing the punishment of dismissal to that of denial of three increments warrants any interference.

So far as the question of backwages is concerned, the Labour Court has ordered the payment of all backwages except the amount of three yearly increment from 1.3.1983. It is the settled principle that in case of departmental inquiry the employee is entitled to receive the full wages for the intervening period only when he is exonerated and other wise in cases when there is no exoneration there is no legal entitlement for full backwages. In this view of the matter, it cannot be said that the respondents were entitled to receive full

backwages for the entire period right from the date of their dismissal till the date of their reinstatement. Normally in such matters the question of payment of wages for the intervening period is to be decided on the basis of the relevant rules in this regard as to what will happen in case where there is full exoneration or when an employee is not fully exonerated or is exonerated only partly or his misconduct is proved to the extent lesser than the one for which he was charged. The parties did not bring to the notice of the Labour Court or this Court as to whether there are any rules to this effect in force in the corporation or not. Mr.Majgavkar appearing for the Gujarat Road Transport Corporation has submitted that the Corporation is willing to pay 50% of the backwagges to each of the two respondents for the period they remained out of an employment.

Mr.Kogje relying upon 1983 SLR Pg.135 [Ramakant Misra Vs. The State of U.P. and Others] and 1995 (6) SCC Pg.237 [Palghat BPL & Pspthozhilaliunion Vs. BPL India Ltd. and Another] (Supra) has submitted that in the case of Ramakant Misra Vs. State of U.P full wages were granted although some penalty was imposed and there was no total exoneration and has submitted that in case of Palghat BPL & Pspthozhilaliunion Vs. BPL India Ltd the 75% backwages were granted. In none of these two decisions it has been laid down as a principle of law that in cases where the misconduct is found to be proved to some extent only the full wages must be paid. It ofcourse depends upon the facts and circumstances of each case as to what amount of backwages must be granted in absence of the relevant rules in this regard and therefore, it cannot be said that any of these two decisions lay down any such rule or principle of universal application to grant full backwages in such cases where there is no exoneration, and therefore, I am of the opinion that these two decisions are of no help to the respondents.

When the corporation itself has come with the offer to pay 50% of the backwages to each of the respondents and relying upon the principle that in absence of exoneration full wages cannot be claimed as a matter of right I find that the offer made by the Corporation to pay 50% of the backwages to each of the two respondents is quite reasonable and just.

Mr.Kogje has submitted that once the three increments have been denied, denial of 50% of the backwages would mean a case of double jeopardy against the respondents. There is no question of double jeopardy

or punishment. The punishment of denial of three increments is for the proved misconduct and the question of entitlement to the wages for the period for which they have remained out of employment on account of the dismissal order which has been set aside on the ground that it was excessive punishment, has to be decided on the basis of sound principles in absence of statutory rules in this regard. It is the settled principle and the practice prevalent in various government departments/corporations and in the Central Government service rule also that full wages are paid in case of dismissal order being set aside only in case where there is complete exoneration. This principle is settled and is being usually followed. I do not find any basis to deviate from this principle and therefore it cannot be said that it will be a case of double jeopardy if the backwages, for the period for which the respondents have not worked, are paid only to the extent of 50%.

Accordingly this Special Civil Application is partly allowed. The Award shall stand modified to the extent that the respondents shall be entitled to receive only 50% of the backwages for the period they have remained out of the employment on account of the dismissal order. In all other aspects the impugned Award of the Labour Court is sustained. Rule is made absolute in the terms as aforesaid. No order as to costs.
